

Claims 1-4 are presented for examination.

The amendments and remarks filed on October 6, 2009 have been received and entered.

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang (US 6,582,721)

Lang teaches the use of a dietary supplement of a cobeadlets, of copper, Vitamin C, Vitamin E and Vitamin A in the form of Beta-carotene, lutein and zeaxanthin and

mineral zinc. See column 5, lines 56-60, column 6, lines 20-21, column 9, lines 9-40 and examples 1-12. The above reference differs from the claimed invention in the concentrations of components. It would have been obvious a person skilled in the art add to the claimed components at the claimed range concentrations, motivated by Lang, which teaches all the components as claimed herein at the concentrations close or within the range of the claimed concentrations. The determination of optimum proportions or amounts is considered to be within the skill of the artisan. See *In re Aller*, 105, USPQ 233, 220F2d 454. "Normally, change in temperature, concentration, or both, is not patentable modification; however, such changes may impart patentability to process if ranges claimed produce new and unexpected result which is different in kind and not merely in degree from results of prior art; such ranges are termed "critical" ranges, and applicant has burden of proving such criticality; even though applicant's modification results in great improvement and utility over prior art, it may still not be patentable if modification was within capabilities of one skilled in art; more particularly, where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation".

Applicant's arguments and remarks have been carefully considered, but are not deemed to be persuasive. Applicant in his remarks argues that the prior art contains other components, such as xanthophylls. It is the examiner's position that the use of the term "comprising" permits for the presence of other active ingredients. Applicant's arguments regarding the differences in concentrations have been noted. Such arguments were discussed in the obviousness rejection. Applicant's arguments regarding that the prior art does not teach which ingredient should be contained in the co-beadlets, and which should be present in both co-beadlets and the overall

composition of the dietary supplement have been noted. Applicant is reminded, that the claims of the instant application also fail to determine, which components are in the co-beadlets and which components are in the overall composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZOHREH A. FAY whose telephone number is (571)272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fredrick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ZF
/Zohreh A Fay/
Primary Examiner, Art Unit 1612

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